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13 BARRY LAMAR BONDS

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 UNITED STATES OF AMERICA,) Case No. CR 07 0732 SI
18)
19 Plaintiff,) **DEFENDANT'S PROPOSED**
20 vs.) **INSTRUCTIONS**
21 BARRY LAMAR BONDS,)
22 Defendant.)
23)

24 Defendant proposes that the following instructions be read to the jury.
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Defense Instruction Request No. 1

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Give bracketed language for Model 3.7:

In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.

Defense Instruction Request No. 2

Add underlined language to Model 3.9:

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) whether the witness said something (or failed to say something) at any other time that is inconsistent with what the witness said while testifying;
- (8) whether a witness gave a false statement during the course of an investigation or before a grand jury;
- (9) the reasonableness of the witness's testimony in light of all the evidence; and
- (10) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

Authority: Fed. R. Evid. 613; Sixth Circuit Pattern Jury Instruction 1.07; Benn v. Lambert, 283 F.3d 1040, 1055-1056 (9th Cir. 2002) (whether a witness lied to authorities in the course of an investigation is relevant to the witness's credibility and the jury is entitled to learn of it).

Defense Instruction Request No. 3

Instruction on Government's Obligation to Disclose Evidence:

The government has an obligation to disclose to the defense a statement by one of its witnesses which is inconsistent with any other statement by that witness or any other government witness. I have made a finding that the government failed to do so with regard to a pretrial statement by Kim Bell.

The probative force of evidence depends on the circumstances in which it was obtained. Indications of conscientious investigation by the government will enhance probative force and slovenly work will diminish it. You may consider the government's omission concerning the Bell statement in deciding whether the prosecution has met its burden of proof.

Authority: Kyles v. Whitley, 514 U.S. 419, 446 & n.15 (1995). See also United States v. Sager, 227 F.3d 1138, 1145 (9th Cir. 2000).

Defense Instruction Request No. 4

Re: Count Five – Obstruction of Justice (18 U.S.C. § 1503):

The defendant is charged in Count Five with obstruction of justice in violation of 18 U.S.C. § 1503. In order for the defendant to be found guilty of Count 5, the government must prove each of the following elements beyond a reasonable doubt:

1. The defendant corruptly, that is, for the purpose of obstructing justice,
2. obstructed, influenced, or impeded, or endeavored to obstruct, influence, or impede the grand jury proceeding in which defendant testified,
3. by knowingly giving material testimony that, when considered in its totality, was intentionally evasive, false, and misleading.

A statement was material if it had a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it is addressed.

The government alleges that the following statements obstructed, influenced, or impeded the grand jury, or were made for the purpose of obstructing, influencing, or impeding the grand jury. In order to convict the defendant on this count, you also must unanimously agree that one of these statements was intentionally evasive, false, and misleading:

[See government’s instruction concerning count 5 for identity of statements placed in issue.]

Defense Instruction Request No. 5

Clarify definitions of “corruptly” and “endeavors” in obstruction count:

To act “corruptly” as that word is used in these instructions means to act voluntarily and deliberately and for the purpose of improperly influencing, or improperly obstructing, or improperly interfering with the administration of justice.

The term “endeavors” as used in these instructions means to knowingly and deliberately act or to knowingly and deliberately make any effort which has a reasonable tendency to bring about the desired result. It is not necessary for the government to prove that the "endeavor" was successful or, in fact, achieved the desired result.

Authority: 2A O'Malley et al., Fed. Jury Prac. & Instr. §§ 48:04 & 48.05 (5th ed.)

Defense Instruction Request No. 6

Explain California Law re Recordings Others Without Consent:

Subsection (a) of section 632 of the California Penal Code provides as follows:

Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. [If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.]

Authority: Cal. Pen. Code § 632 (2011).

Defense Instruction Request No. 7

Instruct re: Defendant's Decision Not to Testify:

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

Authority: Ninth Circuit Model Instruction 3.3

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Defense Instruction No. 8

Explain Federal Law re Unauthorized Distribution of Human Growth Hormone:

Subsection (e)(1) of section 333 of Title 21 provides as follows:

Except as provided in paragraph (2), whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services under section 355 of this title and pursuant to the order of a physician, is guilty of an offense punishable by not more than 5 years in prison, such fines as are authorized by title 18, or both.

Authority: 21 U.S.C. 333(e)(1)(2011).

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1 Dated: April 6, 2011

Respectfully submitted,

2 LAW OFFICES OF ALLEN RUBY

3 ARGUEDAS, CASSMAN & HEADLEY, LLP

4 RIORDAN & HORGAN

5 By /s/ Dennis P. Riordan
6 Dennis P. Riordan

7 By /s/ Donald M. Horgan
8 Donald M. Horgan

9 Counsel for Defendant
10 Barry Lamar Bonds

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